



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 29, 1996

Mr. Jerry Bruce Cain
Assistant City Attorney
City of Laredo
Office of the City Attorney
P.O. Box 579
Laredo, Texas 78042-0579

OR96-1972

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101738.

The City of Laredo (the "city") received a request for "[t]he contract between the City of Laredo and Betty Springer leading attorney in the Arbitration Hearing for officer I. P. Rivera vs. The City of Laredo Police Department" and "a copy of the Budget page" showing the budget from which Ms. Springer was paid. You make no argument against disclosure of the "budget page" and assert that the contract between the city and Ms. Springer is excepted from required public disclosure under section 552.103 of the Government Code.

Initially, we conclude that, as you have made no argument against disclosure of the budget page requested, that information must be released to the requestor. *See* Gov't Code § 552.301(a).

Secondly, we note that this office never received a copy of the contract between the city and Ms. Springer. Pursuant to section 552.301(b)(3), a governmental body is required to submit to this office a copy of the specific information requested or a representative sample, labeled to indicate which exceptions apply to which parts of the information. You did not, however, submit to this office a copy or representative sample of the specific information requested; claiming, instead, that you are "unable to find the said contract" in your files.

Pursuant to section 552.303(c) of the Government Code, this office contacted you by facsimile on September 4, 1996, requesting that you provide the information required by section 552.301(b) to our office within seven days from the date of receiving the notice. This correspondence stated that, under section 552.303(e), failure to comply would result in the legal presumption that the information at issue was presumed public.

You argued, again, in response to our facsimile of September 4, 1996, that the city is "unable to find the said contract in its files." You have not indicated, however, whether a copy of the contract is maintained in the files of Ms. Springer. Regardless of whether Ms. Springer has a copy of the contract, we believe that the contract is "collected, assembled, or maintained . . . in connection with the transaction of official business," that the city "has a right of access to it,"¹ and that, therefore, the contract is subject to the Open Records Act. Gov't Code § 552.002(a)(2). Because the contract is subject to the Open Records Act, the city has the responsibility to provide this office with that information when it receives a request for it. Gov't Code §§ 552.301(b)(3), 552.303(c), (d). Because the city has failed to do so, the contract is presumed to be public information, as provided by section 552.303(e) of the Government Code. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest in withholding the information to overcome this presumption. *See Hancock v. State Board of Insurance*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

In any event, you have failed to establish the applicability of section 552.103. When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Thus, under section 552.103(a), a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated and that (2) the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. In this instance, you state that the requestor has appealed his termination of employment with the Laredo Police Department to a district court and that the matter is pending. You have not explained, however, how the contract in question relates to that litigation and, therefore, have not met your burden to withhold the information under section 552.103.

¹In Open Records Decision No. 462 (1987) at 8, we stated:

"[R]ecords which were developed or are maintained by the [governmental body's law] firm, but which [the governmental body is] entitled to examine, are 'maintained' by the [governmental body] within section [552.002] of the act."

Assuming that Ms. Springer has a copy of the contract, we conclude that the city must obtain a copy of the contract from her and release it to the requestor immediately. In addition, as stated above, the city must also release a copy of the budget page showing the budget from which Ms. Springer was paid. We remind the city that the failure or refusal to give access to public information to a requestor as provided by chapter 552 of the Government Code may constitute a criminal offense. Gov't Code § 552.353.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 101738

cc: Mr. I.P. Rivera
484-B Redwood Circle
Laredo, Texas 78041